



Region One
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Ref:DV173-01
July 17, 2001

TO: Environmental Quality Council, Capitol Building, Helena, 59620-1704
Dept. of Environmental Quality, Planning, Prevention & Assistance, PO Box 200901, Helena, 59620-0901
Dept. of Environmental Quality, Permitting Compliance, PO Box 200901, Helena, 59620-0901
Montana Fish, Wildlife & Parks: Director's Office - Chris Smith; Fisheries Division - Karen Zackheim; Legal Unit
MT Historical Society, State Historic Preservation Office, 225 North Roberts, Veteran's Memorial Building, Helena, 59620-1201
Montana State Library, 1515 East Sixth Ave., Helena, 59620-1800
Jim Jensen, Montana Environmental Information Center, PO Box 1184, Helena, 59624
George Ochenski, PO Box 689, Helena, 59624
Wayne Hirst, Montana State Parks Foundation, PO Box 728, Libby, 59923
Montana State Parks Association, PO Box 699, Billings, 59103
Joe Gutkoski, President, Montana River Action Network, 304 N 18th Ave., Bozeman, 59715
Rep. Verdell Jackson, 555 Wagner Lane, Kalispell, 59901-8079
Sen. Bob DePratu, PO Box 1217, Whitefish, 59937-1217
Flathead County Commissioners, 800 S Main, Kalispell, 59901
Flathead County Library, 247 First Avenue E, Kalispell, 59901

Ladies and Gentlemen:

The enclosed Environmental Assessment (EA) has been prepared for the **Rails to Trails of Northwest Montana** project. The purpose of the project is to replace nine culverts in the Ashley Creek tributaries located at the abandoned railroad grade west of Kalispell near the town of Kila to improve public access to trails.

Questions and comments will be accepted through Sunday, August 19, 2001. Please direct your questions or comments to Mark Deleray, Fisheries Biologist, FWP, 490 N. Meridian Road, Kalispell, MT 59901, (406) 751-4543, or e-mail to shjohnston@state.mt.us.

Sincerely,

Daniel P. Vincent
Regional Supervisor

/nli
Enclosure

Flathead

Montana Fish, Wildlife and Parks
1420 E 6th Ave, PO Box 200701 Helena, MT 59620-0701
(406) 444-2452

ENVIRONMENTAL ASSESSMENT CHECKLIST

PART 1. PROPOSED ACTION DESCRIPTION

Project Title: Rails to Trails of NW Montana

Application Date: June 22, 2001

Name, Address and Phone Number: Mark Deleray
490 N. Meridian Rd.
Kalispell, MT 59901
(406) 751-4543

Project Location: Ashley Creek Tributaries

Description of Project: Replace 9 culverts in the Ashley Creek tributaries located at the abandoned railroad grade west of Kalispell near the town of Kila to improve public access to trails.

Other groups or agencies contacted or which may have overlapping jurisdiction:

U.S. Corps of Engineers

PART 2. ENVIRONMENTAL REVIEW

Table 1. Potential impact on physical environment.

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Provided
1. Unique, endangered, fragile, or limited environmental resources				X		
2. Terrestrial or aquatic life and/or habitats				X		
3. Introduction of new species into an area				X		
4. Vegetation cover, quantity and quality				X		
5. Water quality, quantity and distribution (surface or groundwater)			X		X	5.
6. Existing water right or reservation				X		
7. Geology and soil quality, stability and moisture				X		
8. Air quality or objectional odors				X		
9. Historical and archaeological sites				X		
10. Demands on environmental resources of land, water, air & energy				X		
11. Aesthetics				X		

Comments

(A description of potentially significant, or unknown, impacts and potential alternatives for mitigation must be provided.)

5. Work will be done during low flow period. Only two of these have intermittent streamflows. Flows will be very low or likely nonexistent at time of construction.

Table 2. Potential impacts on human environment.

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Provided
1. Social structures and cultural diversity				X		
2. Changes in existing public benefits provided by wildlife populations and/or habitat				X		
3. Local and state tax base and tax revenue				X		
4. Agricultural production				X		
5. Human health				X		
6. Quantity and distribution of community and personal income				X		
7. Access to and quality of recreational activities				X		7.
8. Locally adopted environmental plans & goals (ordinances)				X		
9. Distribution and density of population and housing				X		
10. Demands for government services				X		
11. Industrial and/or commercial activity				X		

Comments

(A description of potentially significant, or unknown, impacts and potential alternatives for mitigation must be provided as comments.)

7. Will improve public access to rails to trails in area.

Does the proposed action involve potential risks or adverse effects which are uncertain but extremely harmful if they were to occur?

No.

Does the proposed action have impacts that are individually minor, but cumulatively significant or potentially significant?

No.

Description and analysis of reasonable alternatives (including the no action alternative) to the proposed action when alternatives are reasonably available and prudent to consider. Include a discussion of how the alternatives would be implemented:

Alternatives could include bridge construction, however this would be expensive and unnecessary.

Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:

1. Work to be conducted during low flow period.

Individuals or groups contributing to, or commenting on, this EA:

EA prepared by: Mark Deleray

Date Completed: June 26, 2001

Email address for comments: shjohnston@state.mt.us
Mail comments to: Mark Deleray, MFWP
490 N. Meridian Rd.
Kalispell, MT 59901

Comments due by: August 19, 2001

APPENDIX A

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

(LIST ANY MITIGATION OR STIPULATIONS REQUIRED, OR NOTE "NONE")

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

YES	NO	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2. Does the action result in either a permanent or indefinite physical occupation of private property?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	3. Does the action deprive the owner of all economically viable uses of the property?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	4. Does the action deny a fundamental attribute of ownership?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO, skip questions 5a and 5b and continue with question 6.]
<input type="checkbox"/>	<input type="checkbox"/>	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
<input type="checkbox"/>	<input type="checkbox"/>	5b. Is the government requirement roughly proportional to the impact

of the proposed use of the property?

_____ X

6. Does the action have a severe impact on the value of the property?

_____ X

7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is **NO**, do not answer questions 7a-7c.]

_____ _____

7a. Is the impact of government action direct, peculiar, and significant?

_____ _____

7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?

_____ _____

7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

(REF:RailsEA.doc)